



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA | GREENVILLE

October 12, 2005

VIA EMAIL & HAND DELIVERY

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive
Columbia, SC 29210

**Re: Generic RFP Docket
Docket No. 2005-191-E
Our File No. 03471-0004**

Dear Mr. Terreni:

Enclosed for filing please find the Rebuttal Testimony of David E. Dismukes on behalf of Newsouth Energy, LLC. By copy of this letter we are serving the same on all parties of record. Please date-stamp the extra copies of the testimony as proof of filing and return them with our courier.

If you have any questions, please have someone on your staff contact me.

Very truly yours,

ROBINSON, MCFADDEN & MOORE, P.C.

Bonnie D. Shealy
Bonnie D. Shealy

/bds

Enclosure

cc/enc:

Mr. David E. Dismukes (via email)
Len S. Anthony, Esquire (via email & U.S. Mail)
Kendal Bowman, Esquire (via email & U.S. Mail)
Richard L. Whitt, Esquire (via email & U.S. Mail)
Kevin A. Hall, Esquire (via email & U.S. Mail)
Scott Elliott, Esquire (via email & U.S. Mail)
Patricia B. Morrison, Esquire (via email & U.S. Mail)
Belton T. Zeigler, Esquire (via email & U.S. Mail)
Shannon B. Hudson, Staff Attorney (via email & U.S. Mail)
Dan F. Arnett, Chief of Staff of ORS (via email & U.S. Mail)
Ms. Daphne Duke (via email)

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OK D. Duke
OK D. Duke

**BEFORE THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 2005-191-E

IN THE MATTER OF:

Generic Proceeding to Explore a Formal
Request for Proposal for Utilities that
are Considering Alternatives for Adding
Generating Capacity

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**REBUTTAL TESTIMONY
OF
DAVID E. DISMUKES, PH.D.**

**ON BEHALF OF
NEWSOUTH ENERGY LLC**

SC PUBLIC SERVICE
COMMISSION

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RECEIVED

1 **REBUTTAL TESTIMONY OF**
2 **DAVID E. DISMUKES, PH.D.**
3 **ON BEHALF OF**
4 **NEWSOUTH ENERGY LLC**
5 **DOCKET NO. 2005-191-E**

6
7 **I. INTRODUCTION**

8 **Q WOULD YOU PLEASE STATE YOUR NAME AND BUSINESS**
9 **ADDRESS?**

10 A My name is David E. Dismukes. My business address is 6455 Overton
11 Street, Baton Rouge, Louisiana. I am the same person that previously filed direct
12 testimony in this proceeding on behalf of NewSouth Energy LLC ("NewSouth").

13 **Q WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

14 A The purpose of my rebuttal testimony is to address a number of issues
15 raised by all of the parties to this proceeding. This includes responding to the
16 letter prepared in this proceeding by the Office of Regulatory Staff ("ORS" or
17 "Staff") and the direct testimony offered by LS Power. I also address a number of
18 issues raised by the various testimonies filed by the state's jurisdictional utilities
19 in this proceeding including: South Carolina Electric & Gas Company ("SCE&G");
20 Duke Power ("Duke"); and Progress Energy Carolinas ("PEC"), which I will refer
21 to collectively as "the utilities."

22 **Q HOW IS THE REMAINDER OF YOUR REBUTTAL TESTIMONY**
23 **ORGANIZED?**

1 A My rebuttal testimony is organized into the following sections:

- 2 • Section II: Summary of Recommendations
- 3 • Section III: Response to Staff and LS Power Position
- 4 • Section IV: Response to Utilities' Position
- 5 • Section V: Conclusions

6 **II. SUMMARY OF RECOMMENDATIONS**

7 **Q HAVE YOUR RECOMMENDATIONS IN THIS PROCEEDING CHANGED**
8 **AFTER REVIEWING THE VARIOUS PARTIES' DIRECT TESTIMONY?**

9 A No they have not. I continue to recommend the Commission find that, in
10 principle, adopting a competitive bidding rule would be in the public interest and
11 to issue an Order in this docket that would move forward with a rulemaking
12 proceeding to explore the means by which a competitive bidding process could
13 be developed that is in the best interest of South Carolina ratepayers. My
14 recommendation is consistent with that offered by the ORS as well as LS Power
15 in this proceeding.

16 **Q WHAT ARE YOUR THOUGHTS REGARDING THE REGULATED**
17 **UTILITIES' POSITION IN THIS PROCEEDING?**

18 A The utilities, while recognizing the numerous benefits of competitive
19 bidding, have offered a "just say no" position relative to competitive bidding.
20 Utilities in this proceeding have participated in RFP processes in the past as
21 either solicitors of capacity or energy, or potential providers of capacity or other
22 competitive energy services in the retail jurisdictions of other states. Further, all
23 the utilities in one way or another recognized there are benefits to using RFPs,

1 but prefer to have the discretion on when and how they initiate competitive
2 bidding, or RFP processes, on a forward going basis. The primary basis for their
3 recommendations to reject a formal RFP rulemaking is on generalized concerns
4 about planning flexibility and their roles as generation planners. RFP rules in just
5 about every state have clearly addressed, and worked around, the concerns
6 raised by the utilities in this proceeding. There is every reason to believe that the
7 South Carolina Commission can also construct a RFP rule that is in ratepayers'
8 best interest and avoid a number of the problems identified by the utilities in this
9 proceeding. I recommend that the Commission reject the utilities' position
10 regarding competitive bidding rules, and move forward with a rulemaking process
11 that is in ratepayers' best interest.

12 **III. RESPONSE TO STAFF AND LS POWER POSITION**

13 **Q WHAT IS YOUR UNDERSTANDING OF THE STAFF'S POSITION IN**
14 **THIS PROCEEDING?**

15 A On September 27, 2005, the Staff sent a letter to the Chief Clerk and
16 Administrator of the Commission, as well as other parties of the record, in this
17 proceeding. The Staff noted that their analysis to date was limited to what they
18 interpreted was the scope of the issues outlined in the Commission's original
19 Notice which was primarily restricted to an examination of whether the
20 Commission should move forward with a competitive bidding rulemaking – not
21 the specifics of any hypothetical rule. Based on this limited scope, the Staff
22 encouraged the Commission to pursue a formal RFP rulemaking process because
23 it would be in the public interest.

1 **Q DO YOU AGREE WITH THE STAFF?**

2 A Yes. I agree that the issues in this proceeding, at this time, should be
3 limited to an examination of whether the Commission should move forward with a
4 RFP process, not any of the specifics of what should be included in a RFP rule.
5 Further, I agree with the Staff that moving forward with a RFP rulemaking
6 process would be in the public interest.

7 **Q WHAT ABOUT LS POWER?**

8 A LS Power has also provided testimony supporting competitive bidding and
9 recommends that the Commission move forward with a formal rulemaking
10 process. Many of the comments and positions offered by LS Power's witness
11 were similar to those that I outlined in my direct testimony, especially those
12 outlining the characteristics of a good competitive bidding rule.

13 **IV. RESPONSE TO THE UTILITIES' POSITION**

14 **Q HOW WOULD YOU SUMMARIZE THE UTILITIES' POSITION IN THIS**
15 **PROCEEDING?**

16 A The utilities in this proceeding, while supporting the general notion of
17 RFPs, have recommended that the Commission not move forward with a formal
18 RFP process and requirement. Almost all of the utilities have rejected the notion
19 of a formal RFP process because:

- 20 • A formal RFP process alters the utility planning process and dampens utility
21 planning responsibility and business judgment.
- 22 • A formal RFP process reduces utility planning flexibility and options.
- 23 • A formal RFP process can potentially increase costs to ratepayers.

1 • A formal RFP process is an unnecessary burden and is time consuming.

2 **Q WHICH UTILITIES HAVE SUPPORTED RFPS?**

3 A None of the utilities in this proceeding support a formal RFP rulemaking
4 process. However, most all have acknowledged, either directly or indirectly, that
5 RFPs offer a number of positive benefits in the generation planning process. For
6 instance:

7 • SCE&G notes that it used a RFP during the Urquhart repowering project to
8 determine what options were available in the rapidly developing wholesale
9 market of the late 1990s. [Cunningham Direct Testimony, 4:23, 5:1.]

10 • Duke notes that its has used RFPs on a regular basis for the past decade,
11 that RFPs can be useful in identifying resource options, and that Duke is
12 “considering expanding that use when it makes economic sense” for their
13 customers. [Hager Direct Testimony, 3: 1-3, 5: 14-15.]

14 • PEC notes that RFP might serve as a valuable means of identifying market
15 opportunities. [Waters Direct Testimony, 11:1.]

16 **Q WHY DO YOU BELIEVE THAT UTILITIES DO NOT SUPPORT A**
17 **FORMAL RFP PROCESS?**

18 A Utilities compete with independent power in developing and operating
19 generation resources. If utilities are not required to conduct a formal RFP prior to
20 each generation acquisition, then they are given the opportunity to determine
21 when and where they compete with IPPs, not regulators. This is not in
22 ratepayers best interest because it puts virtually no competitive discipline on
23 regulated utilities.

Q WHY DO UTILITIES COMPETE WITH IPPS FOR GENERATION DEVELOPMENT?

A Few utilities want to be relegated to being simply a delivery company for someone else's power. Subjecting a utility to formal competitive bidding process puts their self-build generation development opportunities at risk. Further, utilities have, and continue to use regulated generation to extend their power sales capabilities well beyond their regulated service territory. Many utilities can and do, over-develop generation resources and use the excess capacity to make both short-term and longer-term wholesale sales both locally and regionally. This gives regulated utilities a competitive advantage in wholesale markets that independent power generators do not have. Thus, failing to require utilities to go through a formal RFP process not only enables them to preclude competitive sources of generation for their own loads from materializing, but can eliminate broader regional competitive opportunities for independent power.

Q DO YOU AGREE WITH THE ASSERTION THAT RFPS WERE HISTORICALLY DEVELOPED TO "LIMIT THE ABILITY OF INTEGRATED UTILITIES TO SERVE THEIR CUSTOMERS?"

A Not at all. Formal RFP processes have been developed throughout the country to test the market and the utility generation decision process. They were not designed to explicitly preclude utilities from constructing generation facilities. As I noted in my direct testimony, some of the earliest uses for RFPs were associated with the development of QFs after the passage of PURPA. Later, as non-utility generation resource options developed, regulators began using RFPs

1 as a way of testing traditional utility self-build options. The history of public utility
2 regulation has shown that utilities are not always the least-cost developers of
3 generation resources and their planning processes, despite the claims by utilities,
4 have not been sacrosanct and without fault. The experience with nuclear power
5 is a clear case in point.

6 **Q DO YOU AGREE WITH SCE&G'S ASSERTION THAT ADOPTING A**
7 **RFP PROCESS IS TANTAMOUNT TO REMOVING COST-OF-SERVICE**
8 **REGULATION?**

9 A No, in fact, the development of a RFP process allows the Commission to
10 use the best of both worlds as I noted in my direct testimony. Competitive
11 resources can be secured from the wholesale market and included in a regulated
12 cost of service to ensure that ratepayers are protected. Here ratepayers get the
13 benefits of the least cost resource available in the market, as well as the
14 protection of regulation. As I noted in my direct testimony, the RFP process puts
15 competitive pressure on utilities to ensure that they develop and propose projects
16 in the most cost-effective fashion possible. Adopting a RFP process does not
17 mean that ratepayers will be hostage to the ups and downs of spot wholesale
18 market prices.

19 **Q LET'S TURN TO THE FIRST PROBLEM WITH RFPS NOTED BY THE**
20 **UTILITIES. DO YOU SEE THE RFP PROCESS ALTERING THE**
21 **RESPONSIBILITY OF UTILITY PLANNING?**

22 A No. In fact, a RFP can and should support the existing utility planning
23 process. As I noted in my direct testimony, many states require competitive bids

1 to be conducted as part of the overall planning process. The use of competitive
2 bidding expands the search process beyond just self-build options and facilitates
3 the consideration of a much broader range of supply side resources available in
4 the market. If the utility self-build option is ultimately selected, competitive bids
5 can serve as formal “checks” on the winning resource to ensure that it is the most
6 cost effective in the market.

7 **Q WOULD A FORMAL RFP REQUIREMENT ELIMINATE THE NEED FOR**
8 **UTILITIES TO EXERCISE THEIR BUSINESS JUDGMENT IN THE PLANNING**
9 **PROCESS?**

10 A No. The same business judgment that has been used to develop each
11 utilities’ integrated resource plans would continue to be exercised if a formal RFP
12 process were adopted. That business judgment would also be used in
13 determining which and how many resources will be needed over the course of
14 the planning horizon. Business judgment would also come into play in
15 determining the resource need request that would be submitted to the market,
16 the timing of that need, the location of that need, and any and all special
17 operating characteristics that the proposed resource request would need to meet.
18 Several states have formal RFP processes around the US, and in the southeast,
19 and utilities have not been required to remove business judgment in those states.

20 **Q ALL OF THE UTILITIES IN THIS PROCEEDING NOTE THAT THEIR**
21 **ACTIONS ARE SUBJECT TO COMMISSION OVERSIGHT AND APPROVAL**
22 **AND A RULE IS NOT NEEDED. HOW DO YOU RESPOND?**

23 A I agree that utilities’ actions are ultimately subject to Commission

1 approval. This highlights an important distinction and benefit about RFPs – they
2 are not developed to help utilities as much as they are to help regulators ensure
3 that the least cost resource from the market is available. Regulatory
4 commissions rarely have the resources that large utilities and energy companies
5 have in securing “strategic intelligence” about the available resources in the
6 market. A formal RFP process levels the playing field for regulators by giving
7 them the same set of information in evaluating bids as their regulated companies.

8 **Q THE UTILITIES IN THIS PROCEEDING SEEM TO SUGGEST THAT**
9 **THE ONLY THING THAT WOULD RESULT FROM A RFP PROCESS IS A**
10 **PURCHASED POWER CONTRACT. DO YOU AGREE?**

11 A No. There are a variety of different types of product options that can come
12 from competitive markets that range from short-run to intermediate-run to longer-
13 term contracts. There are also life-of-unit purchases and asset acquisition
14 opportunities in competitive markets. There are additional opportunities for
15 utilities to develop, construct, and own new generation facilities, but have those
16 facilities run by third parties. The advantage of competitive markets is they lend
17 themselves to all types of creative innovations that can ultimately benefit
18 ratepayers. Ratepayers however, have limited opportunities to attain these types
19 of benefits if the market is not tested.

20 **Q WOULD SECURING A CONTRACT AS A RESULT OF A COMPETITIVE**
21 **BIDDING PROCESS RESULT IN A RESOURCE THAT IS LESS RELIABLE**
22 **THAN STANDARD UTILITY GENERATION?**

23 A No. IPPs have to follow the terms and conditions included in the contracts

1 that they execute with some other contracting party. In the short-run, IPPs run
2 the risk of incurring a lawsuit in which compensation and damages could be
3 extracted. They also run the risk of losing the contract and the ability to continue
4 to provide service to that party. Over the longer run, IPPs that fail to deliver in the
5 fashion identified in their contracts risk serious damage to their reputation and
6 will find it difficult to obtain new clients in the market – particularly regulated
7 utilities. Thus, besides the legal requirements, IPPs have considerable additional
8 incentives to provide power on the terms and conditions described in their
9 contracts – irrespective of whether these contracts have been secured through
10 bilateral negotiation, or through a formal RFP process.

11 **Q DO IPPS HAVE TO MEET ANY OPERATIONAL STANDARDS IN THE**
12 **TYPICAL CONTRACTS THEY EXECUTE?**

13 A Yes in many instances, particularly contracts that are secured with
14 regulated utilities. These performance standards may address a host of different
15 issues like deliverability/dispatchability; operating efficiencies (fixed heat rates);
16 and reliability/availability. These performance standards are almost always
17 defined, and must be guaranteed, in IPP contracts.

18 **Q DO UTILITIES HAVE TO MEET THESE SAME KIND OF OPERATING**
19 **STANDARDS WHEN THEY BUILD AND OPERATE A REGULATED**
20 **GENERATION ASSET?**

21 A Utilities generally have to meet a host of different reliability standards in
22 the provision of service, but rarely do they provide their regulatory commissions
23 with guarantees on plant operating efficiencies over the life of the asset. No

1 utility, for instance, will guarantee a fixed heat rate or capacity factor over the life
2 of an asset, or for a fixed term, to their regulatory commissions when proposing
3 to construct and operate a regulated generation facility that is ultimately
4 recovered in rates. IPPs however, are forced to meet or exceed these types of
5 contractual standards on a regular basis. This is one of the reasons why
6 securing power from competitive markets can be so advantageous to ratepayers.
7 IPPs have fixed efficiency standards they must meet in order to stay in business
8 and ratepayers benefit from this guaranteed efficiency because it represents an
9 improvement on standard utility practice.

10 **Q DOES A RFP PROCESS WATER-DOWN UTILITY ACCOUNTABILITY?**

11 A No, and in fact, it actually increases utility accountability because now, in
12 addition to answering to regulators, the utility has to justify its decisions relative to
13 opportunities in the market. Formal RFP processes have a way of shining a very
14 bright light on utility generation decisions that make the regulatory process more
15 effective and beneficial to ratepayers.

16 **Q DO YOU AGREE WITH SCE&G'S SUGGESTION THAT THERE IS A**
17 **CONSIDERABLE AMOUNT OF "BACK-END" WORK THAT HAS TO BE**
18 **DONE AFTER A RFP PROCESS AND THERE IS NO "ONE-SIZE-FITS-ALL"**
19 **CONTRACT?**

20 A Yes, but that is typical in most all competitive bidding processes. It is not
21 uncharacteristic to use the RFP process to secure the least cost resource under
22 a firm indicative bid, and then negotiate with the developer for additional savings
23 and even more advantageous operational terms and conditions. This is actually

1 a benefit, not a cost, and if a utility is genuinely acting in its ratepayers' best
2 interest, this further negotiation will result in additional price and non-price
3 advantages for ratepayers. The fact that some of this post-RFP negotiation
4 occurs is not grounds for dismissing a formal RFP process. In fact, it supports
5 that process because it gives the utility more opportunities to exercise its
6 business judgment in negotiating the best deal for ratepayers.

7 **Q SCE&G SUGGESTS THAT HOLDING ASSETS FOR 20, 30, OR 40**
8 **YEARS IS A GOOD THING SINCE THE ASSETS WILL DEPRECIATE AND**
9 **PRESUMABLY BE PAID FOR AT THE END OF THESE PERIODS. DO YOU**
10 **AGREE THIS IS ALWAYS ADVANTAGEOUS?**

11 A No. Certainly there can be some advantages to holding some assets over
12 a long period, particularly solid-fuel resources. But owning the "bricks and
13 mortar" of a power plant can result in certain liabilities as well. When a utility
14 holds such assets it becomes locked into the location, technology and fuel type
15 of an asset. If technologies improve, if resources are needed in alternative
16 locations, or if certain fuel costs increase dramatically, like today's natural gas
17 price increases, utilities will be locked into those facility attributes. Alternatively, if
18 a contract had been secured, then the utility could walk away from these
19 attributes if they proved to be liabilities.

20 **Q DOES YOUR RECOMMENDATION FOR A FORMAL RFP PROCESS**
21 **SUGGEST THAT, IF ADOPTED, UTILITIES WILL NEVER BUILD OR**
22 **OPERATE A POWER PLANT IN SOUTH CAROLINA AGAIN?**

23 A Not at all. It is important to keep in mind that just because a state has a

1 particular RFP process it does not necessarily follow that each and every
2 generation resource will come from the competitive market. Utilities are almost
3 always given the opportunity to compete in these processes, and requiring them
4 to go through a competitive bidding process forces them to “sharpen their
5 pencils” in comparing their own self-build options to those in the market.
6 Ratepayers are clearly the beneficiaries from this type of competition.

7 **Q SCE&G SUGGESTS THAT UTILITIES ARE MORE LIKELY TO MAKE**
8 **SACRIFICES IN TIMES OF CRISES, AND THAT IPPS WILL NOT “RISK**
9 **THEIR ASSETS.” DO YOU AGREE WITH THIS?**

10 A No. IPPs have every incentive, and in many instances have greater
11 incentives to run their facilities than regulated utilities. Consider that regulated
12 utilities are allowed to recover the costs of their plants even if they are not being
13 dispatched. In many instances, utilities will have considerable spare capacity in
14 which they get reimbursed through rates even though the plants are not running.
15 IPPs, however, do not get that same degree of cost recovery: if their plants don't
16 run, they don't get paid. Granted, utilities have regulatory obligations to serve
17 that IPPs do not have, and in turn, are required to hold some excess capacity to
18 serve their customers in periods of unanticipated peaks. The point here,
19 however, is that IPPs, by not getting that cost recovery opportunity, have every
20 incentive to run their plants as often as possible: crisis or no crisis.

21 **Q WHAT IS YOUR UNDERSTANDING OF IPP EFFORTS DURING**
22 **HURRICANE KATRINA AND RITA?**

23 A Hurricane Katrina and Rita were some of the most destructive storms to

1 ever hit the Gulf Coast. The fact that they hit within a month of each other
2 resulted in compounded problems for energy production and delivery in the Gulf
3 Coast region. Hurricane Katrina slammed into South Louisiana and generally
4 impacted the region along and east of, the Mississippi River. Calpine
5 (NewSouth's parent) has one operating facility in that region, the Carville Energy
6 Facility which is a 531 MW cogeneration facility located at the Cosmar Chemical
7 Plant. During that period, Carville was manned, operational and available for
8 dispatch, but constrained by conditions beyond Calpine's control. During and
9 even following Hurricane Katrina, Carville was available for dispatch, although
10 due to extensive damage to the Entergy transmission system, there was no
11 transmission capacity to move the power. The facility was available, however,
12 for utilities to call upon if needed. During Hurricane Rita, the Carville facility was
13 available, but natural gas was curtailed on the entire Bridgeline gas transmission
14 system, making it impossible to generate electricity for Carville, as well as any
15 other industrial or power plant interconnected to that line.

16 **Q WERE IPPS RELIABLE SOURCES OF POWER DURING THIS CRISIS?**

17 A Yes, they were as reliable as any other facility impacted by both
18 hurricanes. Hurricane Rita, for instance, hit the West Louisiana/East Texas area
19 exceptionally hard. This region is very constrained and is bounded on the south
20 by the Gulf of Mexico; to the west by a different interconnect: the Electric
21 Reliability Council of Texas ("ERCOT"); and to the east by a large swampy area
22 known as the Atchafalaya basin. There are some 14 power generation facilities
23 that are located in this region. After Hurricane Rita, only two power plants were

1 operational: one was a regulated utility facility, and the other was an IPP facility:
2 the Tennaska Frontier Generation Station. The other 12 power facilities, most of
3 which were utility plants, were not operational for some period of time. I bring
4 this up not to just to highlight that IPPs will in fact, risk their assets to continue to
5 serve load during periods of crises, but to highlight the fact that natural disasters
6 are rarely discriminating between regulated and competitive assets: they can hit
7 both indiscriminately and equally hard and the fact that these events occur
8 should be no basis for not moving forward with a formal RFP process.

9 **Q LET'S TURN TO THE SECOND UTILITY CRITICISM: FORMAL RFPS**
10 **REDUCE FLEXIBILITY. DO YOU AGREE?**

11 A No. Most all of the utilities in this proceeding have noted that a formal
12 RFP process will reduce their flexibility because, according to their
13 understanding, RFP processes impose rigid evaluation criteria that are constant
14 and unyielding over time, and the process imposes rigid time evaluation
15 constraints. I would disagree with all of the utilities on both points.

16 **Q HOW HAVE OTHER STATES DEALT WITH FLEXIBILITY ISSUES?**

17 A Formal RFP processes are a means, not an ends: they are there to
18 ensure that ratepayers get the best resource possible and they are not
19 developed to serve as a barrier to that goal. Most RFP processes in other states
20 have "out-clauses" or waivers that allow regulated utilities the opportunity to bring
21 a pressing resource need, or an exceptionally good deal, to the Commission
22 without having to go through the RFP process. In return, utilities are required to
23 show that bypassing the RFP process is needed and that the proposed resource

1 acquisition is clearly in the public interest. This gives utilities the flexibility they
2 need to act nimbly during periods of unanticipated need or opportunity. This
3 same degree of flexibility could, and should, be incorporated into any South
4 Carolina competitive bidding rule.

5 **Q DO YOU BELIEVE THAT A FORMAL RFP PROCESS HAS TO HAVE A**
6 **RIGID EVALUATION PROCESS?**

7 A No. I agree with Duke Power which notes that evaluation factors can be
8 “complex and vary according to the circumstances prevailing at the time.” [Hager
9 Direct Testimony, 7:15-16.] I would agree that evaluation criteria should be given
10 the flexibility to be changed with each resource need. However, I would disagree
11 that the evaluation criteria should change within the review of any resource need
12 without an overwhelming determination that doing so would be in the public
13 interest. Further, I would agree with the utilities that evaluation criteria, or
14 weighting factors, should not be explicitly defined in a rule. This is clearly an
15 area where utility business judgment should be exercised, as well as the
16 potential input of the ORS and other stakeholders. Changing these criteria
17 during the course of a project’s evaluation, however, becomes more problematic,
18 and contrary to SCE&G’s claims, could result in a situation where the process
19 would appear to be exploited by utilities for ends that are inconsistent with
20 ratepayers’ best interest. [Lorick Direct Testimony, 6: 18-20.]

21 **Q PEC SUGGESTS THAT HAVING A COMPETITIVE BIDDING RULE**
22 **WOULD SUGGEST THAT UTILITIES ARE “WOEFULLY IGNORANT” OF THE**
23 **MARKET? DO YOU AGREE WITH THIS STATEMENT?**

1 A No. As I noted before, the adoption of a RFP process is not for the sole
2 purpose of utilities. It offers considerable benefits to regulators and the
3 regulatory process, and ultimately ratepayers. Further, to suggest that utilities
4 know everything that goes on in the market, on a localized or regional basis,
5 borders on hubris. Competitive wholesale markets, and their regulation,
6 continues to be a very dynamic. No one company, regulated or not, can claim to
7 have perfect knowledge about the full range of resources and service offerings in
8 any given time, or in any given location. The fact that utilities have entered into
9 RFP processes, even voluntarily, would suggest that they do not have perfect
10 knowledge of market conditions and need to test the market to assess
11 competitive opportunities. My recommendation only suggests that utilities be
12 required to do this on all asset acquisitions, and under general terms and
13 conditions defined by the Commission.

14 **Q LET'S TURN TO THE THIRD UTILITY CRITICISM, THAT A FORMAL**
15 **RFP PROCESS WILL INCREASE COSTS TO RATEPAYERS. DO YOU**
16 **AGREE?**

17 A No, I do not believe that a formal RFP process will result in unnecessary
18 cost increases. Further, to the extent that there are costs associated with any
19 RFP process, they need to be compared to the resulting benefits associated with
20 initiating the competitive bidding process. If you spend \$5 to save \$10, then
21 clearly there is a net benefit of \$5. Likewise, if some costs are incurred to
22 conduct a formal RFP process, those costs need to be compared to the actual
23 benefits before arriving at a conclusion on the cost-effectiveness of the process.

1 The fact that utilities in South Carolina have initiated some kind of RFP
2 processes in the past would suggest that it is not always the case that costs are
3 greater than the benefits of conducting a RFP process. Further, some states
4 have “bid evaluation fees” for participating submitters. These fees help to cover
5 the cost of bid evaluations and minimize impacts of the cost of the RFP process.

6 **Q PEC GIVES AN EXAMPLE OF HOW COMPETITIVE BIDDING MAY**
7 **ACTUALLY HARM CUSTOMERS (INCREASE COSTS) IF NEW LOAD WERE**
8 **TO SUDDENLY MATERIALIZE IN A GIVEN AREA. DO YOU AGREE THAT**
9 **COMPETITIVE BIDDING WOULD BE A PROBLEM IN THIS INSTANCE?**

10 A No. As I noted earlier, most competitive bidding processes in the U.S.,
11 and particularly in the southeast, have waiver provisions to allow utilities to take
12 advantage of unanticipated load serving, or asset acquisition, opportunities. My
13 recommendation would be that South Carolina have similar provisions in its
14 formal RFP rule if adopted. Therefore, utilities in South Carolina will not be pre-
15 empted from taking advantage of the opportunities hypothesized by PEC.

16 **Q PEC GIVES AN ADDITIONAL EXAMPLE OF UNEXPECTED MARKET**
17 **OPPORTUNITY MATERIALIZING THAT WOULD BE DIFFICULT TO SECURE**
18 **IF A FORMAL RFP PROCESS WERE IN PLACE. DO YOU AGREE?**

19 A Again, I do not think that a formal RFP process would include a degree of
20 rigidity that would prevent a regulated utility from taking advantage of an
21 opportunity of this nature. However, it has been my experience that in many
22 instances, the “expediency” of these types of resource acquisitions can be
23 oversold to regulatory commissions. Like other resource acquisitions, any asset

1 acquisition or power contract opportunity that becomes unexpectedly available in
2 the market should be examined to determine whether bypassing the RFP
3 process is in the public interest. Just because certain parties may disagree with
4 the utility's public interest analysis does not diminish the fact that the formal RFP
5 rule allows the utility the flexibility of bypassing the process if it meets its burden
6 of proof with the Commission. Again, this is an instance where the utility must
7 exercise its business judgment and the regulatory process, to acquire an asset or
8 contract. This example clearly shows that a formal RFP process does nothing to
9 diminish that responsibility.

10 **Q LET'S TURN TO THE LAST UTILITY CRITICISM, THAT A FORMAL**
11 **RFP PROCESS IS TIME CONSUMING AND BURDENSOME. DO YOU**
12 **AGREE?**

13 **A** No. Most competitive bidding rules are developed within the context of the
14 overall utility planning process. As I noted in my direct testimony, this process
15 should be conducted on an expedited and deliberate fashion. RFP rules should
16 not create long and unnecessarily litigious processes. In fact, if the process
17 works as many states have planned, the RFP process should be one conducted
18 in a collaborative, rather than litigious fashion. Further, the fact that South
19 Carolina utilities have conducted voluntary RFP processes in the past would
20 suggest that they know how to accommodate a RFP process within the timing of
21 their own resource development needs. As I noted earlier, should certain
22 unanticipated opportunities or challenges arise, there is always a regulatory
23 waiver provision that the utility could exercise should it be in the public interest.

1 **Q PEC QUESTIONS WHETHER ANY IPP COULD BEAT, OR HAS ANY**
2 **ADVANTAGES OVER A UTILITY SELF-BUILD OPTION -- IMPLYING THAT A**
3 **FORMAL RFP PROCESS IS UNNEEDED. CAN IPPS REALLY COMPETE**
4 **WITH UTILITIES IN THE DEVELOPMENT OF GENERATION PROJECTS?**

5 A This also appears to be a rather ambitious statement. IPPs like Calpine
6 for instance, have considerable and concentrated experience in the development
7 of power generation projects in the US and internationally. It seems reasonable
8 to suggest that Calpine may have some competitive advantages in developing
9 and operating certain types of power generation projects, particularly those fired
10 by natural gas. Calpine for instance, has developed 23,903 MW of combined
11 cycle power generation projects over the past 5 years (with 4,038 MW under
12 construction). PEC on the other hand, owns and operates only 2 combined cycle
13 facilities, totaling 556 MW. Calpine is one of the largest operators of natural gas-
14 fired power generation in the U.S. with some 26,899 MW of operational peaking
15 capacity in the U.S. By contrast, PEC operates 2,923 MW of natural gas-fired
16 units. Clearly Calpine, and other IPPs with similar competitive advantages,
17 should be given the opportunity to bring their extensive development and
18 operational experience to the benefit South Carolina ratepayers through a formal
19 RFP process. Creating a formal RFP process, in fact, offers ratepayers the
20 opportunity to garner efficiencies by comparing local to global "best practices" in
21 power generation development and operation.

22 **V. CONCLUSIONS**

23 **Q WOULD YOU PLEASE SUMMARIZE YOUR RECOMMENDATIONS?**

1 A I recommend the Commission find that, in principle, adopting a
2 competitive bidding rule would be in the public interest and to issue an Order in
3 this docket that would move forward with a rulemaking proceeding that would
4 explore the means by which a competitive bidding process could be developed
5 that is in the best interest of South Carolina ratepayers. My recommendation is
6 consistent with that offered by the ORS as well as LS Power in this proceeding.

7 **Q DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY FILED ON**
8 **OCTOBER 13, 2005?**

9 A Yes it does.

CERTIFICATE OF SERVICE

Generic Proceeding to Explore a
Formal Request for Proposal
Process for Utilities That Are
Considering Alternatives for Adding
Generating Capacity

Richard L. Whitt, Esquire
Austin, Lewis & Rogers, P.A.
Post Office Box 11716
Columbia, SC 29211

Kevin A. Hall, Esquire
Nelson Mullins Riley & Scarborough LLP
Meridian 17th Floor
1320 Main Street
Columbia, SC 29201

Scott A. Elliott, Esquire
Elliott & Elliott
721 Olive Street
Columbia, SC 29205

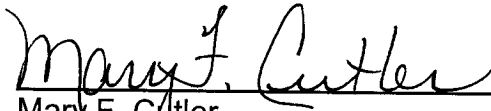
Shannon Hudson, Esquire
Office of Regulatory Staff
1441 Main Street, 3rd Floor
Columbia, SC 29201

Dan F. Arnett, Chief of Staff
Office of Regulatory Staff
1441 Main Street, 3rd Floor
Columbia, SC 29201

Patricia Banks Morrison, Esquire
1426 Main St., Legal Dept. 130
Columbia, SC 29218

Belton T. Zeigler, Esquire
Haynsworth Sinkler Boyd, P.A.
P. O. Box 11889
Columbia, SC 29211-1889

Dated at Columbia, South Carolina this 12th day of October, 2005.


Mary F. Cutler